S.B.CIVIL ARBITRATION APPLICATION NO.45/06

M/s V.D.Agro Tech. Ltd. vs. United Insurance Co. & Ors.

DATE OF ORDER : 29/1/2007

HON'BLE SHRI RAJESH BALIA, J.

Ms.Rekha Borana, for the applicant.
Mr.A.K.Dadhich, for the respondent.

An application had been moved under Section 10/11 of the Arbitration and Conciliation Act, 1996 as the Fire Policy agreement between the applicant and the respondent-Insurance Company contained an arbitration clause that in case any dispute arises in respect of claim, the matter may be referred to the Arbitrator.

The parties having failed to appoint an arbitrator in terms of the agreement in respect of which the applicant having sent a notice under Section 11 calling upon the respondents to act in accordance with the arbitration agreement by referring the dispute to the arbitrator, an application was moved under Section 11 of the Act of 1996 before the District Court, Sriganganagar.

However, considering the decision of Supreme Court in M/s S.B.P. & Co. vs. M/s Patel Engineering Ltd. & ors reported in DNJ (S.C.) 2005 page 957 that the Chief Justice's designate under Section 11 cannot be a District Judge and has to be a

sitting High Court Judge, the application was transmitted to the High Court to be decided by the Chief Justice or his designate.

The deficiency in the requisite fees for consideration of the aforesaid application has been made good by the applicant.

There is no dispute between the parties that dispute relating to the claim raised by the applicant under the Policy exists and arbitration clause is also part of the Insurance Policy and that the arbitrator could not be appointed in terms of the agreement despite notice.

In view of the aforesaid, it is an appropriate case in which arbitrator needs to be appointed in terms of Section 11 of the Act, 1996.

In the facts and circumstances, Shri Jitendra Yadav, retired RHJS resident of Rathkhana Colony, Bikaner is appointed as sole arbitrator, to whom the dispute shall be referred. The cost of the arbitration and fees of the arbitrator shall be as determined by the arbitrator himself.

The application is accordingly allowed.

(RAJESH BALIA), J.

Pankaj Baweja.